

## ATTACHMENT A



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OCT 19 1999

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

JAMES L. DOLAN  
President and CEO  
Cablevision Systems Corporation

**VIA HAND DELIVERY**

Magalie Roman Salas  
Secretary  
Federal Communications Commission  
The Portals  
445 Twelfth Street, SW  
Washington, DC 20554

Re: CC Docket No. 99-295  
Application by New York Telephone Company (dba Bell Atlantic-New York), Bell Atlantic Communications, Inc., for NYNEX Long Distance Company, and Bell Atlantic Global Networks, Inc., for Authorization to Provide In-Region, InterLATA Services in New York

Dear Secretary Salas:

Cablevision Lightpath, Inc. ("Lightpath") hereby files this letter in lieu of comments in response to the Commission's Public Notice requesting comments on Bell Atlantic's Application pursuant to Section 271.<sup>1/</sup> Lightpath's experience in New York reflects that of a true facilities-based provider of residential and commercial competitive telephone services.<sup>2/</sup>

Consistent with the goals of Section 271, the New York Public Service Commission ("NYPSC") has conducted a comprehensive proceeding to examine Bell Atlantic's compliance with Section 271.<sup>3/</sup> As part of this proceeding, Lightpath

<sup>1/</sup> *Comments Requested on Application by Bell Atlantic for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service In the State of New York*, CC Docket No. 99-295 Public Notice (rel. September 29, 1999).

<sup>2/</sup> Lightpath is a full service, facilities-based competitive local exchange carrier that has invested substantial sums to build out a network in the New York City metropolitan area. Lightpath currently is providing service to thousands of residential and commercial customers and has in service over 50,000 access lines. Its existing network spans over which spans over 32,000 fiber miles and 900 route fiber miles.

<sup>3/</sup> NYPSC Case No. 97-C-0271 - *Petition of New York Telephone Company for Approval of its Statement of Generally Available Terms and Conditions Pursuant to Section 252 of the Telecommunications Act of 1996 and Draft Filing of Petition for InterLATA Entry Pursuant to Section 271 of the Telecommunications Act of 1996 ("NYPSC 271")*. In the New York

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emphasized the importance of sound and clearly defined operational and financial arrangements particularly necessary for the deployment of full facilities-based competition.<sup>4/</sup> From an operational perspective, Lightpath relies on Bell Atlantic to provide key intercarrier services, such as timely deliver of interconnection trunks and proper number portability-related translations, in order for Lightpath to provide quality telephone services to its customers. Moreover, the financial arrangements between Lightpath and Bell Atlantic, including payment for intercarrier services, are critical to enable both carriers to adequately recover their costs.

Given the need for sound and stable operational and financial arrangements necessary to support continued investment in competitive telephony, Lightpath focused on two key issues to ensure an open market in New York:<sup>5/</sup> 1) a three-year comprehensive interconnection agreement that fully defines the terms and conditions for carrier interaction<sup>6/</sup> and 2) adequate performance standards and financial remedies to prevent backsliding in a post-entry environment.

Building on Bell Atlantic's commitments in its *Pre-Filing Statement*,<sup>7/</sup> Lightpath and Bell Atlantic successfully reached an agreement to extend their current interconnection agreement, which includes targeted performance standards and financial remedies. When considered with the generic protections established by the NYPSC and Bell Atlantic's commitment to continued performance on key operational and financial requirements, this agreement provides the framework for continued investment in and deployment of competitive, facilities-based telephone services in New York.

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proceeding, Bell Atlantic submitted a pre-filing statement that contained a comprehensive set of open market conditions. NYPSC 271, *Pre-Filing Statement of Bell Atlantic - New York*, April 6, 1998 ("Pre-Filing Statement").

<sup>4/</sup> Affidavit of Leo D. Maese on Behalf of Cablevision Lightpath, Inc. (11-18-97); Request and Supporting Brief of Cablevision Lightpath, Inc. for Proprietary Treatment (11-20-97); Amendment of Exhibit 2 of the Affidavit of Leo D. Maese (1-6-98); Brief of Cablevision Lightpath, Inc. (1-6-98); Reply Brief of Cablevision Lightpath, Inc. (1-16-98); Comments on Draft Pre-Filing Statement (3-23-98); CLI's Letter in Lieu of Comments (9-17-98); CLI's Letter in Lieu of Comments (9-28-98); Supplemental Reply Comments of Cablevision Lightpath, Inc. - Proprietary & Redacted Versions (10-27-98); Comments of Cablevision Lightpath, Inc. (3-4-98); Comments of Cablevision Lightpath, Inc. (4-1-99); Affidavit of Leo D. Maese and Scott Dusten in Response to Bell Atlantic's April 13, 1999 Joint Affidavit (4-28-99); Brief of Cablevision Lightpath, Inc. (8-17-99).

<sup>5/</sup> Id.

<sup>6/</sup> Case 97-C-0961 - *Petition of Cablevision Lightpath, Inc., Pursuant to Section 252(b) of the Telecommunications Act of 1996, for Arbitration to Establish an Intercarrier Agreement with NYNEX*, Order Approving Interconnection Agreement, October 14, 1997; Order Approving First Amendment, October 18, 1999.

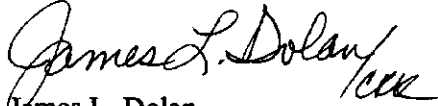
<sup>7/</sup> *Pre-Filing Statement* at 2. See also NYPSC 271, Bell Atlantic witness Mr. Crotty, Hearing Transcript dated August 31, 1999 at 43.

October 19, 1999

Page 3

In light of the competitive safeguards established in both the NYPSC's proceeding on Bell Atlantic's application and Lightpath's interconnection agreement, Lightpath has concluded that the New York local telephone market is currently open to competition and therefore supports a favorable determination on Bell Atlantic's application to enter the long distance market in New York.

Respectfully submitted,

  
James L. Dolan

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## ATTACHMENT B

Copyright 2001 Warren Publishing, Inc.  
STATE TELEPHONE REGULATION REPORT

OCTOBER 12, 2001

SECTION: Vol.19, No.21

LENGTH: 525 words

HEADLINE: VERIZON CEO SAYS TERROR MEANS STATES AND FCC MUST RETHINK CLEC MARKET ENTRY PATHS

BODY:

Verizon Co-CEO Ivan Seidenberg said the Sept. 11 terror attacks showed federal and state regulators needed to stop focusing on unbundled network element platforms (UNE-Ps) for development of local competition and work on developing "real facilities-based competition in business."

Seidenberg, speaking at a Goldman Sachs conference in N.Y., gave an uncustomarily harsh indictment of non-facilities-based CLECs, saying he learned in the aftermath of the attacks that "on the business side, this whole scheme of CLEC interconnection is a joke." He particularly lashed out against competitors that relied on Verizon's UNE-P instead of building their own networks.

Consumers were well served after the attack damaged Verizon's network because they had redundancy through facilities-based wireless carriers, Seidenberg said. However, on the business service side, UNE-P competitors were coming off the same platform as Verizon, meaning they couldn't offer customers any alternative routes when Verizon's system went down, he said.

Promising to be more outspoken on that issue, Seidenberg said he would welcome another facilities-based competitor "our size" but not "this stuff" of competitors' seeking "7th floor colocation space" to serve a handful of customers using Verizon's network.

Seidenberg said the terrorist attack also showed "that scale and scope mattered." Verizon's efforts to reroute and repair its network in lower Manhattan showed "only one integrated company could pull all the resources together," he said. While smaller companies could form a coordinated effort to make such repairs, that coordination would have added delay, he said. Verizon was able to gather workers quickly from throughout its region, "all of them people who know the business." Verizon now has restored about 80% of service, he said.

There are other lessons the industry and regulators should learn from the attacks, he said: (1) There's not enough spectrum and "more spectrum means more diversity." He said Verizon lost 10 cell sites in the attack and he thought industry as a whole lost 30-40. (2) "We need to rethink security," including the broad access given to CLEC technicians. "We've got people running through our buildings with FCC permits and we don't even know who they are." An executive of another former Bell company recently brought up the same issue, saying all ILECs were concerned, although it wasn't a "politically correct" issue.

Seidenberg told analysts that Verizon was "still assessing" the financial impact of the attack and would have a "fuller picture of the impact of the crisis" when it announced 3rd quarter earnings Oct. 30. However, he offered a preview of the 3rd quarter: (1) 752,000 new wireless customers added for a total of 28.7 million and "reduced churn." (2) 120,000-130,000 new DSL subscribers, increasing the total to 960,000-970,000. The company earlier had targeted 1.2-1.3 million for the year and Seidenberg said it probably would be at lower end. (3) 650,000- 700,000 new long distance customers, for total of 6.6-6.7 million, nearing year-end targets of 6.7-6.9 million.

LOAD-DATE: October 12, 2001

## ATTACHMENT C

**Before the  
STATE OF NEW JERSEY  
BOARD OF PUBLIC UTILITIES**

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BOARD OF PUBLIC UTILITIES  
NEWARK, N.J.

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)  
In the Matter of the Petition )  
of Cablevision Lightpath - NJ, Inc. )  
for Arbitration Pursuant to Section 252(b) )  
of the Telecommunications Act of 1996 )  
to Establish an Interconnection Agreement )  
with Verizon New Jersey Inc. )  
\_\_\_\_\_ )

Docket No. \_\_\_\_\_

**CABLEVISION LIGHTPATH - NJ, INC. PETITION FOR ARBITRATION**

Cablevision Lightpath - NJ, Inc. ("Lightpath"), through its attorneys, hereby petitions the New Jersey Board of Public Utilities ("Board") for arbitration of certain rates, terms, and conditions for interconnection and related arrangements with Verizon New Jersey Inc. ("Verizon") pursuant to Section 252(b) of the Communications Act of 1934, as amended.<sup>1/</sup> Lightpath's experience as a facilities-based competitive local exchange carrier over the past six years has shown that securing a comprehensive interconnection agreement with the incumbent local exchange carrier ("ILEC"), in this case Verizon, is critical to successfully penetrating the local exchange market. As the Board will recall, the Parties and the Board spent significant time and resources to complete the initial agreement between the Parties, which Lightpath views as a fair and equitable business arrangement. To minimize the expenditure of resources by as well as the burdens on all Parties, including the Board, Lightpath has presented alternatives to streamline the renewal process by building on the Parties' existing interconnection agreement in New Jersey

<sup>1/</sup> Telecommunications Act of 1996, Pub. L. 104-104, 110 Stat. 56 (1996) (codified at 47 U.S.C. §§ 151 *et seq.* (1996)) ("Act").



## FACTUAL BACKGROUND

On January 9, 2001, Lightpath made a request in writing to Verizon for renegotiation of the Parties' existing agreement for the state of New Jersey.<sup>14/</sup> Under the terms of the existing agreement, "within sixty (60) days of such Renegotiation Request Date each Party will provide to the other a written description of its proposed changes to the Agreement" and "shall enter into negotiations on such proposed changes seventy-five (75) days after such Renegotiation Request Date."<sup>15/</sup> Pursuant to that requirement and in hopes of expediting the interconnection negotiation process, Lightpath proposed amending the existing agreement merely to extend the Term of the agreement for an additional three years, leaving all other terms and conditions in full force and effect.<sup>16/</sup> Lightpath received no response from Verizon, and, in accordance with the requirements of the Parties' existing agreement, Lightpath sent an e-mail to Verizon on March 22, 2001 to establish a negotiation schedule.<sup>17/</sup>

Instead of agreeing to extend the existing agreement or even working from the existing agreement as the basis for negotiations, Verizon forwarded to Lightpath its standard, "one size fits all," multistate template agreement on March 26, 2001.<sup>18/</sup> In light of the statutory deadlines

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<sup>14/</sup> See Letter from Chérie R. Kiser, Counsel for Lightpath, to Jack H. White, Verizon (Jan. 9, 2001) ("Renegotiation Request") (Attachment 2). Lightpath's renegotiation request was made pursuant to section 22 of the Parties' New Jersey Agreement.

<sup>15/</sup> See Interconnection Agreement Under Sections 251 and 252 of the Telecommunications Act of 1996 by and between Bell Atlantic - New Jersey, Inc. and Cablevision Lightpath - NJ, Inc., section 22.1.1 (Oct. 13, 1998) ("New Jersey Interconnection Agreement") (Attachment 3).

<sup>16/</sup> See Letter from Chérie R. Kiser, Counsel for Lightpath, to Jack H. White, Verizon, and accompanying Amendment Proposal (Mar. 12, 2001) (Attachment 4). Lightpath, however, did not object to limited revisions to account for any applicable legal or technical developments since the date the Parties first entered into the New Jersey Interconnection Agreement, e.g. reciprocal compensation.

<sup>17/</sup> See E-mail from Chérie R. Kiser, Counsel for Lightpath, to Jack H. White, Verizon (Mar. 22, 2001) (Attachment 5).

<sup>18/</sup> See E-mail from Dorothy A. Dennis, Verizon, to Chérie R. Kiser, Counsel for Lightpath, and accompanying attachments (Mar. 26, 2001) ("Verizon Template Agreement") (Attachment 6). Verizon stated it did not respond to Lightpath's Renegotiation Request sooner because it never received the Renegotiation Request.

and in the interest of reaching a voluntarily negotiated agreement, the Parties agreed to reset the statutory clock and establish March 15, 2001 as the date on which Verizon received Lightpath's Renegotiation Request.<sup>19/</sup> In addition, Verizon agreed to supply Lightpath with its proposed changes to the Parties' existing agreement by April 30, 2001.<sup>20/</sup> Verizon finally supplied Lightpath with some of its proposed changes on May 2, 2001 (the "Verizon 5/2 Draft").<sup>21/</sup> Although the Parties resolved that the existing agreement would serve as the basis for the Parties' negotiations, Verizon inserted its multistate template language into various sections of the agreement and made significant alterations to provisions of the agreement that were different from the provisions covering the same issues the Parties had just negotiated in connection with the Parties' Connecticut interconnection agreement.

More importantly, Verizon's 5/2 Draft stated that Verizon was still reviewing the reciprocal compensation section of the agreement and struck out the existing language in that section.<sup>22/</sup> Verizon has not provided proposed language for reciprocal compensation as of the date of this filing. After waiting for the reciprocal compensation proposal to no avail, Lightpath submitted to Verizon on June 5, 2001 its proposed revisions to Verizon's 5/2 Draft, including Lightpath's proposals on physical architecture and reciprocal compensation (the "Lightpath 6/5 Draft").<sup>23/</sup> Many of Lightpath's proposed revisions were merely to make the language consistent

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<sup>19/</sup> See Letter from Sean M. Foley, Counsel for Lightpath, to Jack H. White, Verizon, and accompanying attachment (Apr. 26, 2001) (Attachment 7); Letter from Jack H. White, Verizon, to Sean M. Foley, Counsel for Lightpath, and accompanying attachment (May 1, 2001) (Attachment 8).

<sup>20/</sup> See Letter from Sean M. Foley, Counsel for Lightpath, to Jack H. White, Verizon, and accompanying attachment (Apr. 26, 2001) (Attachment 7); Letter from Jack H. White, Verizon, to Sean M. Foley, Counsel for Lightpath, and accompanying attachment (May 1, 2001) (Attachment 8).

<sup>21/</sup> See E-mail from Dorothy A. Dennis, Verizon, to Chérie R. Kiser and Angela F. Collins, Counsel for Lightpath, and accompanying attachments (May 2, 2001) (the "Verizon 5/2 Draft") (Attachment 9).

<sup>22/</sup> See Verizon 5/2 Draft, section 5.7 (Attachment 9).

<sup>23/</sup> See E-mail from Angela F. Collins, Counsel for Lightpath, to Dorothy A. Dennis, et. al., Verizon, and accompanying attachments (June 5, 2001) (the "Lightpath 6/5 Draft") (Attachment 10).

with the language recently negotiated in connection with the Parties' interconnection agreement in Connecticut in light of Lightpath's ability to import interconnection provisions from other states under the *BA-GTE Merger Conditions*.<sup>24/</sup> In addition, in hopes of quickly resolving the Parties' issues, Lightpath provided Verizon with six potential dates to conduct conference calls to discuss the Parties' proposed changes.<sup>25/</sup>

After Lightpath submitted revisions to Verizon on June 5, 2001, the Parties met via conference call on June 28, 2001 with an agenda to discuss physical architecture, reciprocal compensation, and measurement and billing.<sup>26/</sup> Lightpath presented Verizon with specific questions regarding its physical architecture proposal and reiterated its position that the physical architecture provisions in the existing agreement were still applicable to the Parties' relationship and should be maintained. Verizon's subject matter experts attending this call were the same as those participating in the prior negotiations resulting in the Parties' existing New Jersey interconnection agreement. Despite this, Verizon did not appear to understand the physical architecture arrangement contained in the Parties' existing agreement. After several hours of ineffective negotiations, the Parties agreed to reschedule the discussion of physical architecture for their next conference call scheduled for July 11, 2001.

During the June 28, 2001 call, the Parties also briefly discussed Lightpath's proposed changes to the measurement and billing language. Lightpath explained that, in light of the Parties' recent negotiations in Connecticut on this exact issue, Lightpath had merely modified Verizon's proposed language to conform with the language the Parties had just negotiated in

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<sup>24/</sup> See *BA-GTE Merger Conditions* ¶ 31(a).

<sup>25/</sup> See Lightpath 6/5 Draft (Attachment 10).

<sup>26/</sup> See E-mail from Dorothy A. Dennis, Verizon, to Chérie R. Kiser and Angela F. Collins, Counsel for Lightpath (June 26, 2001) (Attachment 11). In addition, attached to the e-mail, Verizon provided its proposal for two-way trunking for Lightpath's review ("Verizon Two-Way Trunking Proposal") (Attachment 12).

Connecticut. Verizon stated that this change would most likely be acceptable and that it would confirm its acceptance of this change. On August 8, 2001, Verizon finally advised Lightpath that Lightpath's proposal to incorporate the provisions from the Parties' Connecticut agreement was acceptable.<sup>27/</sup>

In addition, although Lightpath had given Verizon a reciprocal compensation proposal, Verizon stated on the call that its subject matter experts were still working on reciprocal compensation language and Lightpath could expect language "any day now." In the interest of resolving the issue before the arbitration deadline, Lightpath suggested that the attorneys for each Party conduct a separate conference call to discuss reciprocal compensation issues on July 9, 2001. On the July 9, 2001 call, Lightpath reiterated its position on the amount of compensation each party should receive and forwarded Verizon additional revisions to the New Jersey Pricing Schedule reflecting its proposal.<sup>28/</sup> Verizon never formally responded to Lightpath's proposals regarding reciprocal compensation or provided a Verizon-specific reciprocal compensation proposal per its commitment in the Verizon 5/2 Draft.<sup>29/</sup> However, on the Parties' August 6, 2001 conference call discussed below, Verizon finally did outline the reciprocal compensation options it believed were available to the Parties under the FCC's recent *Reciprocal*

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<sup>27/</sup> See E-mail from Dorothy A. Dennis, Verizon, to Angela F. Collins, Counsel for Lightpath (Aug. 8, 2001) (Attachment 23).

<sup>28/</sup> See E-mail from Chérie R. Kiser, Counsel for Lightpath, to Jim G. Pachulski, Counsel for Verizon, and accompanying attachment (July 9, 2001) (Attachment 13).

<sup>29/</sup> See Verizon 5/2 Draft, section 5.7 (Attachment 9).

*Compensation Decision*.<sup>30/</sup> In an effort to resolve the issue, Lightpath sent Verizon a further revised reciprocal compensation proposal based on that call.<sup>31/</sup>

Unfortunately, after several e-mail exchanges confirming a conference call scheduled for July 11, 2001,<sup>32/</sup> Verizon cancelled the call.<sup>33/</sup> In hopes of continuing the negotiations, Lightpath presented Verizon with six additional times Lightpath representatives were available to conduct conference calls.<sup>34/</sup> Although Verizon stated that its representatives were unavailable for all but one of those times, and was unsure of the availability of its subject matter experts for that one remaining date, the Parties tentatively scheduled another call for July 26, 2001.<sup>35/</sup> Verizon later cancelled the July 26 call, stating that its subject matter experts were unavailable.<sup>36/</sup>

On August 6, 2001, the Parties held a conference call to discuss physical architecture. Lightpath reiterated its view that the existing physical architecture arrangement served both Parties' interests and should simply be extended. Verizon rejected this proposal, claiming that it could no longer honor the existing arrangement because it feared it would have to offer the

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<sup>30/</sup> See generally *In the Matters of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Intercarrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98, 99-68, Order on Remand and Report and Order, FCC 01-131 (rel. Apr. 27, 2001) ("*Reciprocal Compensation Decision*").

<sup>31/</sup> See E-mail from Angela F. Collins, Counsel for Lightpath, to Dorothy A. Dennis and Jim G. Pachulski, Verizon, and accompanying attachments (Aug. 8, 2001) (Attachment 14).

<sup>32/</sup> See E-mail from Angela F. Collins, Counsel for Lightpath, to Dorothy A. Dennis and Jim G. Pachulski, Verizon; E-mail from Dorothy A. Dennis, Verizon, to Angela F. Collins, Counsel for Lightpath (June 28, 2001); and, E-mail from Dorothy A. Dennis, Verizon, to Angela F. Collins, Counsel for Lightpath (June 29, 2001) (Attachment 15).

<sup>33/</sup> See E-mail from Jim G. Pachulski, Counsel for Verizon, to Dorothy A. Dennis, Verizon and Angela F. Collins, Counsel for Lightpath (July 10, 2001) (Attachment 16).

<sup>34/</sup> See E-mail from Angela F. Collins, Counsel for Lightpath, to Dorothy A. Dennis, Verizon (July 16, 2001) (Attachment 17).

<sup>35/</sup> See E-mail from Dorothy A. Dennis, Verizon, to Angela F. Collins, Counsel for Lightpath (July 17, 2001) (Attachment 18).

<sup>36/</sup> See E-mail from Dorothy A. Dennis, Verizon, to Angela F. Collins and Chérie R. Kiser, Counsel for Lightpath (July 24, 2001) (Attachment 19).

interim portion of the arrangement to other CLECs under its MFN obligations. In Verizon's 5/2 Draft and again during the Parties' June 28, 2001 conference call, Verizon stated that it would provide Lightpath with its proposals covering physical architecture and reciprocal compensation. During the August 6, 2001 conference call, over three months after Verizon's original commitment, Verizon stated these two proposals would be available in approximately one week. Thus, almost five months after submitting its Renegotiation Request and more than three weeks into the statutory arbitration period, Lightpath still has not received Verizon's proposals for these key issues. Despite this and in an effort to reach a negotiated agreement, Lightpath sent Verizon further revised physical architecture and reciprocal compensation proposals based on the August 6 conference call.<sup>37/</sup>

In light of the looming arbitration deadline and Verizon's seeming inability to produce the materials and personnel needed for negotiations, Lightpath attempted to resolve several of the outstanding issues by reiterating that many of Lightpath's minor modifications to Verizon's proposals conformed those provisions with the language painstakingly negotiated by the Parties in Connecticut.<sup>38/</sup> In light of Verizon's MFN obligations, these provisions should not even be a matter of negotiation, let alone arbitration.<sup>39/</sup> If Verizon honored its MFN obligations and imported these sections from the Connecticut agreement, it would eliminate eight of the outstanding twenty issues from the Parties' negotiations, and consequently, from the Board's consideration. To date, Verizon has accepted only half of the sections it is obligated to import.<sup>40/</sup>

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<sup>37/</sup> See E-mail from Angela F. Collins, Counsel for Lightpath, to Dorothy A. Dennis and Jim G. Pachulski, Verizon, and accompanying attachments (Aug. 8, 2001) (Attachment 14).

<sup>38/</sup> See E-mail from Angela F. Collins, Counsel for Lightpath, to Jim G. Pachulski, Counsel for Verizon (July 16, 2001) (Attachment 20).

<sup>39/</sup> See *BA-GTE Merger Conditions* ¶ 31(a).

<sup>40/</sup> See E-mail from Dorothy A. Dennis, Verizon, to Angela F. Collins and Chérie R. Kiser, Counsel for Lightpath (July 24, 2001) (Attachment 21); E-mail from Dorothy A. Dennis, Verizon, to Angela F. Collins, Counsel for

Consequently, numerous issues remain unresolved. Verizon's lack of responsiveness and apparent unwillingness or inability to negotiate with Lightpath suggests that Verizon is not interested in or capable of committing the resources necessary to reach a negotiated agreement. As such, resolution of the outstanding issues does not appear possible at this stage without Board intervention. Thus, Lightpath respectfully requests that the Board consider Lightpath's requests contained herein and resolve the outstanding issues in this arbitration according to the standards outlined by the Act and consistent with Lightpath's stated positions and proposed language, which are generally the renewal of the existing agreement or inclusion of mutually agreed upon provisions from Connecticut.

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Lightpath (July 25, 2001) (Attachment 22); E-mail from Dorothy A. Dennis, Verizon, to Angela F. Collins, Counsel for Lightpath (Aug. 8, 2001) (Attachment 23).

## ATTACHMENT D



January 7, 2002

**BY ELECTRONIC MAIL & HAND DELIVERY**

Henry M. Ogden, Acting Secretary  
Board of Public Utilities  
Two Gateway Center  
Newark, New Jersey 07102

**Re: In the Matter of the Petition of CABLEVISION LIGHTPATH – NJ, INC. Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with VERIZON NEW JERSEY, INC.  
Docket No. TO01080498**

Dear Acting Secretary Ogden:

The Arbitrator's Decision Concerning Language To Implement His Recommended Decision of December 12, 2001, Verizon New Jersey Inc. ("Verizon NJ") "direct[ed]" Cablevision LightPath NJ, Inc. ("Cablevision") to prepare, and Verizon NJ to sign and deliver an Interconnection Agreement between Verizon NJ and Cablevision (the "Agreement") today. Verizon NJ objects to the Agreement because, *inter alia*, it contains terms which,

- (i) have no basis in the Arbitrator's Recommended Decision of December 12 (e.g., §11's inclusion of UNE terms and conditions although the Arbitrator's Recommended Decision only concerned the pricing of UNEs),
- (ii) are contrary to the public interest (e.g., redefining the access charge compensation structure established by the Board);
- (iii) are improper (e.g., page 1, paragraph 1's Effective Date preempts any review of the Arbitrator's decision; §11's suggestion that New York and/or Connecticut tariffs apply in New Jersey); and
- (iv) are premature (e.g., the Agreement is being executed prior to the Board's acceptance of the Arbitrator's Recommended Decision, the receipt of exceptions or motions to modify the Arbitrator's decision).

As required by the arbitrator's decision, however, Verizon NJ has submitted the executed Agreement to Cablevision. A hard copy of the Agreement along with the executed signature pages will be forwarded separately by Cablevision.

By our countersignature on the Agreement, Verizon NJ does not agree to the Agreement as either a voluntary or negotiated agreement. The filing and performance by Verizon NJ of the Agreement does not in any way constitute a waiver by Verizon NJ of its position as to the illegality or unreasonableness of the Agreement or a portion thereof, nor does it constitute a waiver by Verizon NJ of all rights and remedies it may have to seek review of the Agreement, or to petition the Board, other administrative body, or court for reconsideration or reversal of any determination made by the Board pursuant to the above referenced arbitration, or to seek review in any way of any provisions included in this Agreement.

Verizon NJ, for the reasons stated above, therefore requests that the Board not approve the agreement in its present form unless and until it has remedied the legal infirmities identified above.

Respectfully submitted,

Bruce D. Cohen

BDC:dmp  
Attachment  
cc: Service List

Bruce D. Cohen  
Vice President & General Counsel  
Verizon New Jersey Inc.



540 Broad Street, Floor 20  
Newark, NJ 07102  
Phone 973.649.2656

Fax 973.481.2660  
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December 21, 2001

**Via Hand Delivery**

Daniel J. O'Hern, Esq.  
Gibbons, Del Deo, Dolan, Griffinger  
One Riverfront Plaza  
Newark, NJ 07102

**RE: In the Matter of the Petition of CABLEVISION LIGHTPATH – NJ,  
INC. Petition for Arbitration Pursuant to Section 252(b) of the  
Telecommunications Act of 1996 to Establish an Interconnection  
Agreement with VERIZON NEW JERSEY, INC.  
Docket No. TO01080498**

Dear Arbitrator O'Hern:

Verizon New Jersey Inc. ("Verizon NJ") submits its version of the contract language originally assigned to Cablevision Lightpath ("CLI") on the issues of Physical Architecture, Unbundled Network Elements (UNEs), Reciprocal Compensation, Types of Traffic, as well as its version of §§ 7.3.6 and 7.3.7 of Tandem Transit Traffic the arbitrator assigned Verizon NJ to draft. Verizon NJ and Cablevision Lightpath ("CLI") have met and agreed on § 1.65 covering the definition of Reciprocal Compensation, §§4.1.5 and 4.1.7 regarding Physical Architecture, §§ 7.3.1 through 7.3.5 and 7.3.8 of Tandem Transit Traffic, Directory Listings and Measurement and Billing (except for the incorrectly defined term "Local Traffic"). The parties are close to agreement on the issue of Referral Announcements,. The parties, however, have been unable to agree to language to accomplish your determinations for the remaining issues.

Verizon NJ's December 19 letter to the arbitrator outlined the glaring misinterpretations, errors or omissions in the language CLI originally drafted. Rather than repeat those objections here, Verizon NJ incorporates its December 19 letter and the objections raised therein by reference. Verizon NJ's close examination of CLI's version

of the language to reflect the Arbitrator's decision reveals the following additional deficiencies:

1. Physical Architecture

(a) The arbitrator directed CLI to draft language that requires CLI to establish interconnection points at the New Brunswick and Rochelle Park tandems for CLI terminated traffic by December 2002, and to also establish trunks at those interconnection points for the hand-off of Verizon terminated traffic. CLI's version fails to address issues concerning the delivery of CLI's traffic to Verizon's IPs. CLI should deliver its traffic to Verizon at each tandem unless its traffic volume justifies direct end office trunking. Thus, Verizon NJ has suggested the addition of § 4.1.3.2

(b) The arbitrator's recommended decision addressed CLI IPs only. Verizon NJ's version of § 4.1.3 *et seq.* specifically retains Verizon NJ's terminating end offices and tandems as the Verizon NJ IPs. Verizon NJ's revised § 4.1.3 assumes that the CLI IP would be a collocation site, consistent with the previous CLI commitment/ agreement and the obvious assumption for implementing the arbitrators' decision that CLI would establish an IP at the VZ tandem.

CLI is required to provide or purchase transport to get to each tandem, at a minimum, to which CLI terminates traffic. CLI's draft language, however, provides that it may hold-off establishing CLI IPs at the additional tandems and that it may hold-off delivering traffic to Verizon NJ at the relevant tandems until December 2002, at which point both the VZ and CLI IPs would be at each VZ tandem. Verizon NJ's version of §§ 4.1.3 and 4.1.4 define CLI's obligations.

Verizon NJ IPs are defined by the Board through the review conducted during the UNE proceeding; at the same time the Verizon NJ terminating reciprocal compensation rate is set. Specifically, the tandem terminating rate is established. This rate covers Verizon NJ's costs for traffic handed off to Verizon NJ at the relevant terminating tandem, and *does not* cover transport from another tandem to the terminating tandem. As such, Verizon NJ's § 4.1.3.2 simply reaffirms and clarifies Verizon NJ's § 4.1.3. The point in including reference to the LERG in Verizon NJ's § 4.1.3.2 is to effect the arbitrator's ruling. Delivering traffic to Verizon NJ's tandems is meaningless unless the traffic is delivered to the right Verizon NJ tandem. If CLI brings traffic to the Newark tandem for a Verizon NJ customer served by a Verizon end office that subtends the Rochelle Park tandem, we eviscerate the arbitrator's intent.

(c) The arbitrator agreed with Verizon NJ's concerns regarding CLI's choice of a single interconnection point and the financial consequences. The single IP architecture requires Verizon NJ to bear all of the additional cost of providing transport between the Verizon NJ customer and the designated CLI IP. Accordingly, the arbitrator required CLI to establish IPs at all three tandems in the 224 LATA by December 2002. While CLI is under no obligation to establish additional IPs, if CLI elects to offer additional IPs

to any other carrier, it should not discriminate against VZ and refuse to allow VZ to utilize those additional IPs that CLI has established.

## 2. Reciprocal Compensation

CLI's version of § 5.7 makes it appear as if Reciprocal Compensation is applicable to Switched Exchange Access Service and Internet Traffic. It also suggests that the terms and conditions of existing federal and state tariffs will not govern Switched Exchange Access Service or all Toll Traffic. To ensure clarity, Verizon NJ has suggested § 5.7.8.

## 3. UNEs

(a) Verizon NJ's Obligations (§ 11.1). The arbitrator recommended decision only concerned the pricing of UNEs, not the terms and conditions by which they should be provided. The Recommended Decision did not change Verizon's obligation to provide UNEs. Verizon NJ has drafted § 11.1 to set forth its general obligation to provide UNEs (*e.g.*, Verizon NJ is only obligated to provide UNEs only to the extent such UNE is available on Verizon NJ's network) and to establish what purpose(s) CLI may use a UNE.

(b) Reference to tariffs. The arbitrator found that the New York tariffed rates for UNEs would control until the Board's UNE Order was available. As CLI well knows, the Board's UNE Order has been issued. Thus, there is no need to specifically reference the New York tariff. To the extent that the Board's UNE Order does not specify a rate for a UNE, Verizon NJ's § 11.1(d) incorporates applicable tariff rates.

(c) Specific Network Element facilities. Verizon NJ has also added language to §§ 11.2-11.8 which lists and defines, with specificity, the various network element facilities. *See e.g.*, Verizon NJ's version of §§ 11.2.1 *et seq.*, 11.2.5. The Board's UNE Order established rates based on a specific set of cost inputs, which are based on a specific definition of terms and conditions that result in the costs/rates. Therefore, in approving rates, the Board must have either directly or in this way indirectly approved associated terms and conditions. The arbitrator noted that the Board would be issuing an order on "pricing terms and conditions". Therefore, Verizon NJ's language should conform to the terms and conditions as approved by the Board (and as will be the standard terms and conditions for Verizon NJ UNEs in NJ).

(d) Pricing Schedule (Exhibit A). CLI's proposed Pricing Schedule does not incorporate the recently approved UNE prices. Verizon NJ is not prepared to submit specific UNE prices at this time but expects them to be available shortly. Verizon NJ respectfully requests that the arbitrator grant it a short extension of time to present the correct prices for insertion into the agreement. In the alternative, Verizon NJ requests that the arbitrator continue the rates reflected in CLI's draft subject to true-up.

Verizon NJ further objects to the CLI drafted language's failure to incorporate the 3:1 rebuttable presumption set forth in the FCC's Internet Order. Quite correctly, the arbitrator did not (and cannot) override the FCC on that aspect of the FCC decision.

#### 4. Tandem Transit Traffic

(a) Inclusion of a "Transition Period" (§ 7.3.7). CLI's draft language ignores the arbitrator's intent regarding Tandem Transit Traffic by striking all references to a "transition period" ignores. The arbitrator found that once CLI's transit traffic reaches the DS-1 level it has 180 days to negotiate interconnection agreements with third-party carriers. During this time CLI is to take the necessary steps to move from using Verizon NJ as the transiting carrier to establishing direct trunking with third-parties. This period of time is a transition period which is reflected Verizon New Jersey 's language.

The contract continues to require that CLI enter into a separate agreement and directly interconnect with the third-party carrier within 180 days of reaching the DS1 level, which Verizon NJ's proposed language clearly provides. The transit billing fee surcharge does NOT alleviate that requirement. That is, CLI still has a contractual obligation to enter into direct trunking, and if it did not would be in breach. Verizon NJ's proposed § 7.3.7 addresses a potential breach.

\* \* \*

For all the foregoing reasons, Verizon NJ's language on Physical Architecture, Unbundled Network Elements (UNEs), Reciprocal Compensation, Types of Traffic and §§ 7.3.6 and 7.3.7 of Tandem Transit Traffic comports with the arbitrator's determinations and should be adopted as the final arbitrated language.

Respectfully submitted,

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December 19, 2001

**Via Hand Delivery**

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**RE: In the Matter of the Petition of CABLEVISION LIGHTPATH – NJ,  
INC. Petition for Arbitration Pursuant to Section 252(b) of the  
Telecommunications Act of 1996 to Establish an Interconnection  
Agreement with VERIZON NEW JERSEY, INC.  
Docket No. TO01080498**

Dear Arbitrator O'Hern:

In accordance with the Arbitrator's Recommended Decision dated December 12, 2001 (the "Recommended Decision"), Verizon New Jersey Inc. ("Verizon NJ") has attached its version of the contract language reflecting your determinations on two issues -- Tandem Transit Traffic and Directory Listings. On December 17, 2001, as required by the Recommended Decision, Verizon NJ submitted contract language to CLI for its review and comment on those two issues. As of the writing of this letter, we have not received any response from CLI concerning Verizon NJ's proposed language. In addition, as detailed in Verizon NJ's attached letter to Acting Secretary Ogden also dated today, Verizon NJ just received CLI's proposed language yesterday. Simply put, there was insufficient time for each party to exchange marked-up language, or agree on the language assigned to the other.

Verizon NJ would prefer to first work with CLI in the hopes of resolving some, if not all, of the issues raised in the recently exchanged draft language. Therefore, pursuant

to the Arbitrator's Recommended Decision in this matter, Verizon NJ respectfully asks for an extension of the deadline to allow the parties additional time to submit their separate versions of the language and, if necessary, request the arbitrator's guidance to craft language that comports with his determinations.

Verizon NJ's initial assessment of CLI's proposed language is that it does not accurately reflect the arbitrator's ruling for reasons that include, but are not limited to, the following:

1. UNE Provisions (§11).

The arbitrator's findings regarding UNEs directed CLI to draft language that would "make it explicitly clear the NJBPU's [UNE] Order will automatically supersede the current pricing arrangement."<sup>1</sup> Nonetheless, CLI's language does not even mention the UNE Order<sup>2</sup> nor does it reflect what terms and conditions should apply. Since the Board has established new UNE rates and those rates are inextricably linked to the terms and conditions for the provision of UNEs (which drive resulting costs/rates), CLI's proposed language should point to the UNE Order.

2. Physical Architecture (§4.1.3).

(a) The arbitrator found that Verizon NJ's concerns regarding CLI's choice of a single interconnection point and the financial consequences thereof are "genuine." Accordingly, he recommended that (i) by December 2002, CLI must interconnect at Verizon NJ's two other tandems in LATA 224 as it has promised; (ii) CLI may continue to maintain a single point of interconnection until December 2002; and (iii) however, the Board must "hold" CLI to its commitment to interconnect at each tandem and should keep this docket open until December 2002. Thus, CLI's assignment was to draft that language that required it to establish its interconnection points at the New Brunswick and Rochelle Park tandems for CLI terminated traffic by December 2002 and at the same time establish trunks at those interconnection points for the hand-off of Verizon terminated traffic. While the parties appear to be in agreement regarding the placement of CLI's IPs, there is no language in the CLI's proposed language concerning Verizon NJ IPs.

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<sup>1</sup> *Id* at 40.

<sup>2</sup> *I/M/O The Board's Review of Unbundled Network Elements Rates Terms and Conditions of Bell Atlantic New Jersey, Inc.* Docket No. TO00060356 Summary Order of Approval, December 17, 2001



3. Reciprocal Compensation.

(a) Definition of Local Traffic (§ 1.47). The arbitrator recommended that the Board allow CLI the right to choose its own local calling areas.<sup>3</sup> However, he also noted that CLI's designation of its own local calling areas is constrained by the confines of the 224 LATA<sup>4</sup> and only the Board can define local calling areas.<sup>5</sup> CLI's draft language does not properly reflect this determination. Rather, it simply states that CLI is free to define its own local calling areas.

(b) Definition of Percent Interstate Usage ("PIU") and Percent Local Usage ("PLU") (§§ 1.59 and 1.60). While the arbitrator recommended rejection of the FCC Traffic Factors proposed in favor of the status quo PIU/PLU ratios for measurement of internet bound traffic, he reaffirmed application of the FCC's Internet Order and the 3:1 rebuttable presumption. CLI's language, however, does not indicate that the use of the PIU/PLU ratios may not indicate the true jurisdictional nature of the traffic.

4) Types of Traffic (§4.0).

a) In the introductory sentence to this section CLI purports to list the types of traffic to be exchanged under this Agreement: "Local Traffic, IntraLATA toll (and interLATA Toll, as applicable Traffic, Transit Traffic, Meet Point Billing Traffic, Ancillary Traffic, and other traffic subject to Reciprocal Compensation." The arbitrator's decision did not expand the categories of traffic subject to reciprocal compensation and the FCC's Internet Order clearly limited the definition to local traffic. Hence, there is no rational basis for the inclusion of additional types of traffic CLI may claim is subject to Reciprocal Compensation.

b) CLI Draft § 4.1.1 does not address Internet traffic on Traffic Exchange Trunks.

c) CLI Draft § 4.1.3 makes it appear that IntraLATA toll traffic is subject to reciprocal compensation; this needs to be corrected.

5) Pricing Schedule. CLI's Draft Pricing Schedule does not (a) address Verizon NJ charging CLI for entrance facilities and direct trunk transport rates from the access tariffs to get to Verizon NJ's IP; (b) reflect the FCC's rates for Internet traffic or the 3:1 rebuttable presumption; and (c) include a definition of traffic.

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<sup>3</sup> *Id.* at 24.

<sup>4</sup> *Id.* at 25.

<sup>5</sup> *Id.* ("I believe that a state commission can establish local calling areas that are not symmetrical.")

As noted earlier, the above list is not exhaustive but rather is meant to illustrate the types of problems with CLI's draft language. Because of the short period of time to resolve these issues, Verizon NJ is not yet prepared to provide its version of the language assigned to CLI covering Physical Architecture, Reciprocal Compensation, UNEs, Rates and Charges and Referral Announcements. Verizon NJ continues to review CLI's draft language and plans to provide its version of the contract on all disputed issues to both the Arbitrator and CLI by Thursday, December 27. This would provide ample time for the parties to meet either by themselves or with the arbitrator (or both) to pare down the issues and finalize an interconnection agreement. Consequently, Verizon NJ requests an extension that would permit its submission of a finalized agreement to the Board for approval by January 7, 2002.

Verizon NJ respectfully requests that the arbitrator approve its proposed amended schedule.

Respectfully submitted,

A. Ayo Sanderson

Enclosures

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December 18, 2001

VIA HAND DELIVERY

Henry Ogden, Acting Secretary  
Board of Public Utilities  
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**RE: In the Matter of the Petition of CABLEVISION LIGHTPATH – NJ,  
INC. Petition for Arbitration Pursuant to Section 252(b) of the  
Telecommunications Act of 1996 to Establish an Interconnection  
Agreement with VERIZON NEW JERSEY, INC.  
Docket No. TO01080498**

Dear Secretary Ogden:

Verizon New Jersey Inc. ("Verizon NJ") respectfully requests an extension of the deadline established in Board Rule 10(c) requiring submission of a written executed interconnection agreement between Verizon NJ and Cablevision Lightpath ("CLI") based upon the provisions of the Arbitrator's Recommended Decision issued December 12, 2001 in the above proceeding. This request is necessary because CLI recently provided forty plus pages of contract language to Verizon at such a time that it has compromised timely compliance with the arbitrator's directions regarding the procedure to effectuate his ruling. The Arbitrator's Recommended Decision clearly provided:

I direct that CLI shall draft the contract language to accomplish my determinations on the issues of Architecture, Reciprocal Compensation, Rates and Charges[,] UNES and Referral Announcements. I direct that Verizon [NJ] shall draft the language covering Tandem Transit and Directory Listings. The parties shall then prepare a complete document for submission to NJBPU for its consideration. If the parties are unable to

agree on the language assigned to each other, they will submit their separate versions to me within five days hereof and I will choose the language that best effectuates my ruling.<sup>1</sup>

CLI did not send its assigned language to Verizon until after close of business on Monday, December 17.

The short amount of time remaining was insufficient to allow Verizon NJ to review, comment and reconcile differences with CLI. Simply put, the parties have not met and conferred regarding their respective language assignments. In light of the upcoming holidays and the vacation schedules of the various subject matter experts, negotiators and others involved, the parties may not be able to resolve cooperatively until January some, if not all, of the issues raised in the draft language.<sup>2</sup> That is, the parties have not had, and probably will not have, an opportunity to complete, much less execute an agreement.

Verizon NJ's initial review of the CLI proffered language suggests that the majority of it is unacceptable as it does not accomplish the arbitrator's determinations. For example, the arbitrator's findings regarding UNEs directed CLI to draft language that would "make it explicitly clear the NJBPU's [UNE] Order will automatically supersede the current pricing arrangement."<sup>3</sup> Nonetheless, CLI's language does not even mention the UNE Order<sup>4</sup> nor does it reflect what terms and conditions should apply. Pursuant to the Arbitrator's Recommended Decision, Verizon NJ will separately forward its version of this language to the arbitrator.

Similarly, regarding the designation of local calling areas, CLI's language does not reflect the arbitrator's decision. The arbitrator recommended that the Board allow CLI the right to choose its own local calling areas.<sup>5</sup> However, he also noted CLI's designation of its own local calling areas is constrained by the confines of the 224 LATA<sup>6</sup> and the fact that only the Board can define local calling areas.<sup>7</sup> CLI's draft language does not reflect this. Rather, it simply states that CLI is free to define its own local calling areas.

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<sup>1</sup> *I/M/O Petition of Cablevision CLI-NJ, Inc. for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon New Jersey Inc.*, Docket No. TO01080498, Arbitrator's Recommended Decision to the State of New Jersey Board of Public Utilities at 48.

<sup>2</sup> The nine month time clock in which a state commission is to conclude an arbitration, *see* §252, should not be at issue here. During the hearing, CLI expressed a willingness to extend the Board's statutory time to resolve this arbitration. *See* Tr. at 197 (MS. KISER: I think Cablevision Lightpath would looking to be able to get the transcript back before we submit a brief and so I think that we would be willing to give the Board an extension on its time to resolve this issue in order to give you sufficient time once you get our briefs. . . .)

<sup>3</sup> *Id.* at 40.

<sup>4</sup> *I/M/O The Board's Review of Unbundled Network Elements Rates Terms and Conditions of Bell Atlantic New Jersey, Inc.*, Docket No. TO00060356 Summary Order of Approval, December 17, 2001

<sup>5</sup> *Id.* at 24.

<sup>6</sup> *Id.* at 25.

<sup>7</sup> *Id.* ("I believe that a state commission can establish local calling areas that are not symmetrical.")

Another example of CLI's patent misinterpretation of the Arbitrator's Recommended Decision is in its proposed physical architecture language. The arbitrator found that Verizon NJ's concerns regarding CLI's choice of a single interconnection point and the financial consequences thereof are "genuine." Accordingly, he recommended that (i) by December 2002, CLI must interconnect at Verizon NJ's two other tandems in LATA 224 as it has promised; (ii) CLI may continue to maintain a single point of interconnection until December 2002; and (iii) however, the Board must "hold" CLI to its commitment to interconnect at each tandem and should keep this docket open until December 2002. Thus, CLI's assignment was to draft that language that required it to establish its interconnection points at the New Brunswick and Rochelle Park tandems for CLI terminated traffic by December 2002 and at the same time establish trunks at those interconnection points for the hand-off of Verizon terminated traffic. The language that CLI proposes does not do this.

Verizon NJ respectfully requests an extension of time for the submission of a final executed interconnection agreement until January 7, 2002. This period will allow the parties additional time to amicably resolve these and other issues, and if the parties are unable to do so, to allow the arbitrator time to decide which language best effectuates his decision. Verizon NJ attaches to this letter the language it was assigned to draft, specifically that covering Tandem Transit Traffic and Directory Listings.

Respectfully submitted,

A. Ayo Sanderson

cc: Daniel O'Hern  
Kevin Walsh  
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Carol Artale  
Jim Corcoran  
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